

THE GREAT AMERICAN TAX NOVEL

Lawrence Zelenak*

THE PALE KING. By *David Foster Wallace*. Edited by *Michael Pietsch*. New York, Boston, and London: Little, Brown and Company. 2011. Pp. x, 548. \$27.99.

INTRODUCTION

David Foster Wallace—author of the celebrated novel *Infinite Jest*¹ and among the most acclaimed American fiction writers of his generation—killed himself in 2008 at the age of forty-six.² He left in his office hundreds of pages of *The Pale King*, an unfinished novel set in the fictional Peoria, Illinois regional examination center (“REC”) of the Internal Revenue Service (“IRS” or “the Service”) in 1985.³ Although many chapters of the novel were seemingly complete, Wallace left no indication (other than what could be gleaned from the chapters themselves) of the order of the chapters (pp. vi–vii). Michael Pietsch, who had served as the editor of *Infinite Jest*, assembled the chapters into a surprisingly coherent—although more or less plotless—novel, and the book was published to considerable critical acclaim in early 2011.⁴

As assembled by Pietsch, *The Pale King* focuses on a dozen or so income tax examiners—including a fictional David Foster Wallace—working at the Peoria REC. The examiner’s job is to decide whether income tax returns (selected for the examiner’s consideration by computers) should be referred for audit (Chapter Twenty-Seven). The novel describes how the featured employees came to work for “the Service,” as it is generally referred to by its employees (p. 244), and how they deal with the boredom of their jobs, as well as their attitudes toward the Service and toward the tax system itself. Although some of the chapters can stand on their own as self-contained stories, the book as a whole has no real plot. Some of Wallace’s notes, included by Pietsch as “Notes and Asides” at the end of the book, suggest Wallace had plans for an overarching plot, based on a power struggle between IRS traditionalists favoring the continued use of human examiners and reformers wanting to replace human examiners with

* Pamela B. Gann Professor of Law, Duke Law School.

1. DAVID FOSTER WALLACE, *INFINITE JEST* (10th anniversary ed. 2006).

2. Bruce Weber, *David Foster Wallace, Influential Writer, Dies at 46*, N.Y. TIMES, Sept. 15, 2008, at A23.

3. The story of how *The Pale King* came to be published is told by Michael Pietsch in his “Editor’s Note.” Pp. v–x.

4. For a sampling of the favorable reviews, see John Barron, *Wallace Files Whirlwind of Ideas at IRS*, CHI. SUN-TIMES, Apr. 17, 2011, at 6; James Lasdun, *Review: Book of the Week; A Thrilling Book About Boredom*, GUARDIAN, Apr. 16, 2011, at 6; and Tom McCarthy, *Last Audit*, N.Y. TIMES, Apr. 17, 2011 (book review), at BR1.

computers,⁵ but only a few hints of this conflict appear in the published novel. It is possible that even a completed version of *The Pale King* would have been essentially plotless. As Pietsch points out in his “Editor’s Note,” one of Wallace’s notes describes the book as “a series of setups for things to happen but nothing ever happens.”⁶

If the unfinished novel lacks a plot, it certainly does not lack themes. Three of the major themes, all of which are themes not commonly explored in fiction (to put it mildly), are the philosophies of tax administration, tax-paying as a civic responsibility, and boredom in the workplace. Cultural commentary on the income tax is, of course, nothing new. There have been, for example, close to 100 tax-related radio and television sitcom episodes from the 1940s to the present,⁷ and about twice that many tax-related *New Yorker* cartoons from 1925 to the present.⁸ To the best of my knowledge, however, the income tax has never received anything comparable to the sustained attention from a major artist that it has now received in *The Pale King*.⁹ To anyone interested in the cultural significance of the federal income tax, the book’s publication is a unique and remarkable event.

Like the tax-related sitcoms and cartoons, *The Pale King* owes its existence to the character of the federal income tax as a return-based mass tax. Because the vast majority of adult Americans are required to file a federal income tax return each year, the income tax captures the public’s attention—for better or worse—to an extent unmatched by any other tax. For most households, the burden of the federal payroll tax is greater than the burden of the federal income tax.¹⁰ Nevertheless, in popular culture the income tax is very much *the* tax because of the taxpayer involvement mandated by the return-filing requirement. It is no accident that Wallace set his novel in a facility for the administration of the income tax, rather than in a facility focused on the payroll tax.

Part I of this Review examines the novel’s treatment of the three major themes previously mentioned—the struggle between proponents of compet-

5. Notes and Asides, pp. 543–46.

6. P. viii (internal quotation marks omitted).

7. See Lawrence Zelenak, *Six Decades of the Federal Income Tax in Sitcoms*, 117 TAX NOTES 1265 (2007).

8. The *New Yorker* tax cartoons are discussed in Lawrence Zelenak, *The Federal Income Tax in Popular Culture* (unpublished manuscript on file with author).

9. It is true that the protagonist of *The Firm* (played by Tom Cruise in the movie based on the book) is a tax attorney. JOHN GRISHAM, *THE FIRM* (1991); see also Erik M. Jensen, *The Heroic Nature of Tax Lawyers*, 140 U. PA. L. REV. 367, 377 (1991) (“[T]he tax lawyer’s image will be irrevocably changed by *The Firm*.”). But setting aside any questions of the relative artistic merits of John Grisham and David Foster Wallace, *The Firm* makes no pretense of taking seriously anything about taxes.

10. In 2006, for example, 54.4 percent of households had payroll taxes in excess of income taxes if only the employee share of payroll taxes is considered, and 76.9 percent of households had payroll taxes in excess of income taxes if both the employee and employer shares of payroll taxes are considered. *Historical Payroll Tax vs. Income Tax*, TAX POLICY CENTER, (Apr. 30, 2009), http://www.taxpolicycenter.org/taxfacts/Content/PDF/payroll_income_historical.pdf.

ing philosophies of tax administration, the understanding of taxpaying as a fundamental duty of citizenship, and the problem of boredom in the modern workplace. Part II considers Wallace's creative mixture of fact and fiction in his descriptions of the workings of the tax system. Part III offers a tentative explanation of the novel's rather obscure title.

But first, a disclaimer: I am not a literary scholar or critic, nor am I pretending to be one in this Review. Rather, I am an academic tax lawyer (and a former temporary employee of the Internal Revenue Service), and the Review is written from that perspective. For many creative works, a review of this sort would be inappropriate. It does not much matter, for example, whether the film version of *The Wizard of Oz* accurately depicts life on a Kansas farm in the 1930s. But *The Pale King* is different. The book devotes a significant percentage of its pages to detailed explanations and discussions of tax civics, tax policy, and tax administration, and it is every bit as serious about those topics as *Moby-Dick* is about whaling. *The Pale King* is not merely set in a tax administration facility; it is also, in very significant part, about taxes and tax administration. It is a *Moby-Dick* of taxes, aiming to educate its readers about a highly specialized field of endeavor, and using that field of endeavor to explore some of the profoundest themes. On the assumption that a whaler's review of *Moby-Dick* would have served a useful purpose, I offer this tax lawyer's review of *The Pale King*.

I. THREE BIG THEMES

A. *Dueling Philosophies of Tax Administration*

The fictional Wallace who narrates portions of *The Pale King* describes 1985 as the year when efficiency-oriented policymakers gained the upper hand in a bureaucratic battle

between traditional or 'conservative' officials who saw tax and its administration as an arena of social justice and civic virtue, on the one hand, and those more progressive, 'pragmatic' policymakers who prized the market model, efficiency, and a maximum return on the investment of the Service's annual budget.¹¹

Wallace (the nonfictional Wallace) demonstrates a serious interest in real-world philosophies of tax administration. Although the struggles of 1985 are fictionalized, it is clear that Wallace intended those struggles to reflect the actual battles for the soul of the IRS.

Wallace's fictional year of crisis seems to have been inspired by two actual periods of crisis for the IRS. First, 1985 really was a terrible year for the Service. Overwhelmed employees at the Philadelphia Service Center threw away unprocessed returns and checks,¹² and millions of refund checks

11. Pp. 82–83 (footnotes omitted).

12. Anne Swardson, *Inside: The Internal Revenue Service; GAO Finds Severe Problems in Philadelphia*, WASH. POST, Nov. 26, 1985, at A15.

were delayed because of computer problems.¹³ (*The Pale King* describes events similar to those occurring in Philadelphia in 1985 as having occurred in 1982 in the fictional Rome, New York REC (pp. 7–8).) The problems were so severe that Commissioner Roscoe Egger included his personal apology with the 1985 tax forms sent to taxpayers at the beginning of 1986.¹⁴ The real 1985 crisis, however, was merely operational; it did not involve a struggle over the philosophical underpinnings of tax administration.

The crisis of 1997–98 more closely resembled the 1985 crisis described by the fictional Wallace, in that it truly was a crisis of tax administration philosophy. In September 1997, the Senate Finance Committee held three days of heavily publicized hearings on alleged abuses of taxpayers by the Service, culminating in a remarkable public apology by the acting commissioner.¹⁵ In the aftermath of the hearings, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998,¹⁶ aimed at producing a “kinder, gentler IRS.”¹⁷ Along with a host of more substantive provisions, the Act required the Service to “review and restate its mission to place a greater emphasis on serving the public and meeting taxpayers’ needs.”¹⁸ A chastened IRS complied by declaring that its mission was “to provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.”¹⁹ Serving the public had also been featured in the discarded mission statement, but (shockingly enough) only after the collection of taxes:

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.²⁰

Assuming *The Pale King*’s 1985 competition between philosophies of tax administration is intended as a fictionalized version of the actual crisis of

13. *IRS Sends Its Annual Presents—and Apologies for ’85 Snafus*, L.A. TIMES, Dec. 26, 1985, pt. 1, at 2.

14. See Robert D. Hershey, Jr., *Overhauling the Nation’s Tax Policy; I.R.S. Hopes to Run Well After Tune Up*, N.Y. TIMES, Mar. 2, 1986, § 12, at 14.

15. See John M. Broder, *Director of I.R.S. Issues an Apology for Agent Abuses*, N.Y. TIMES, Sept. 26, 1997, at A1.

16. Pub. L. No. 105-206, 112 Stat. 685.

17. See David S. Broder, Op-Ed., *New Cat at the IRS*, WASH. POST, May 17, 1998, at C09 (“Charles O. Rossotti will go back to work as IRS commissioner to make good the politicians’ promise of a kinder, gentler IRS . . .”).

18. Internal Revenue Service Restructuring and Reform Act of 1998, § 1002, 112 Stat. 685, 690.

19. Press Release, Internal Revenue Service, New IRS Mission Statement Emphasizes Taxpayer Service (Sept. 24, 1998) (internal quotation marks omitted), available at <http://www.irs.gov/pub/irs-news/ir-98-59.pdf>.

20. *Id.* (internal quotation marks omitted).

1997–98, it misses the mark. The 1997–98 conflict was between traditionalists focused on revenue collection and reformers focused on “customer” satisfaction. In both the real world and *The Pale King*, the approaches advocated by the reformers could be described as business models, but the two approaches are business models in very different senses. The real-world reformers borrowed from business the model of taxpayers as customers, but they did not adopt the revenue-maximizing goal of the reformers of *The Pale King*.

The real-world reformers rejected revenue maximization for several reasons. First, they objected to the police-state qualities inherent in a serious attempt to maximize net tax revenues.²¹ Second, they argued that from a broader societal perspective (as contrasted with a focus solely on the government’s net tax revenues), high levels of enforcement were inefficient; the transfer of tax dollars from taxpayers to the government did not increase societal wealth, while the enforcement costs decreased societal wealth.²² Finally, they were concerned that aggressive enforcement of the tax laws might backfire in revenue terms, by decreasing taxpayers’ intrinsic motivation to comply with the tax laws.²³ When taxpayers feel trusted by the government, they may reciprocate by behaving in a trustworthy manner.²⁴ But when the government demonstrates a lack of trust by its adoption of aggressive tax enforcement strategies, taxpayers may lose their intrinsic motivation to comply and decide to cheat whenever they believe they can escape detection.²⁵

As with the fictional struggle in *The Pale King*, the actual conflict of 1997–98 implicated civic-based concerns. The argument that a customer-satisfaction model of tax enforcement could foster intrinsic motivation to comply with the tax laws should be congenial to those who see taxpaying as an arena of civic virtue; they would view intrinsic motivation to comply with the tax laws as a form of civic virtue. That argument does not, however, play any role in the conflict described in *The Pale King*.²⁶ If followed to its logical conclusion (which it was not in 1997–98), the taxpayers-as-customers model would have even deeper civic implications of a sort also congenial to the civic-minded traditionalists of *The Pale King*. Despite their insistence on the taxpayers-as-customers model, the real-world reformers paid little or no attention to the step needed to complete the analogy—that is, to answering the question of what the taxpayer-customer is buying from

21. See, e.g., JOEL SLEMROD & JON BAKIJA, *TAXING OURSELVES: A CITIZEN’S GUIDE TO THE DEBATE OVER TAXES* 182 (4th ed. 2008).

22. See *id.* at 182–83.

23. See *id.* at 183–84.

24. *Id.*

25. See *id.*

26. One character in *The Pale King* does note precisely this concern: “[T]oo much efficiency can be misconstrued as hostility, excessive aggression type of thing, which increases [taxpayer] hostility and can actually negatively affect the public’s compliance . . .” P. 110. However, this concern is otherwise absent in *The Pale King*’s depiction of the 1985 struggles between the traditionalists and the progressives.

the government with his tax dollars. If taxpayers are the customers of the government, it must be because they are—in the famous formulation of Justice Holmes—buying civilization with their taxes.²⁷ This view of taxes as the price of civilization should be profoundly appealing to civic-oriented tax administration traditionalists (in both *The Pale King* and the real world), but unfortunately it played no role in either the fictional struggles of 1985 or the real struggles of 1997–98.

In sum, although *The Pale King* reflects reality in the sense that there really was, in the not-too-distant past, conflict over the basic mission of the Service, it misses rather badly the actual terms of the debate. Far from urging revenue maximization, the real-world reformers advocated a kinder, gentler Service that would—by the very terms of its mission statement—put a higher priority on customer satisfaction than on revenue collection.

In addition to not reflecting reality, the conflict described in *The Pale King* is inherently implausible, simply because the philosophical differences between the two sides would not produce significantly different operational directives. Both philosophies would support high levels of spending on tax compliance operations. The traditionalist, civic-oriented philosophy would do so because the Service's role as the "guardian[] of civic virtue"²⁸ requires it to strive to identify and correct all taxpayers who pay less than their mandated share of the nation's tax burden. The progressive, pragmatist philosophy would do so because its goal is to maximize net revenue, and increased spending on enforcement almost always increases net revenue.²⁹ Despite the genuine philosophical disagreement, then, it is not clear that the disagreement would lead to any major operational conflicts.

The Pale King suggests the operational conflict between the two philosophies relates to returns that blatantly disregard the law but with respect to only small amounts of tax. According to an IRS trainer explaining the implementation of the net revenue-maximizing approach to examinations, "a flamboyantly noncompliant return could be operating off such a low Line 23 [gross income] that it's actually more efficient" not to order an audit of the return.³⁰ Presumably a traditionalist, outraged by the flaunting of civic responsibility demonstrated by such a return, would have ordered an audit—cost effectiveness be damned. Although this could be an operational difference between the two philosophies, it is hard to see how it could make a very significant difference. In the vast majority of cases, the larger the understatement of tax the greater the motivation to audit the return, for both traditionalists and reformers. The larger the understatement, the more offen-

27. To quote Justice Oliver Wendell Holmes, Jr.: "I like to pay taxes. With them I buy civilization." RANDOLPH E. PAUL, *TAXATION FOR PROSPERITY* 277 (1947) (internal quotation marks omitted).

28. P. 339 (internal quotation marks omitted).

29. See C. EUGENE STEUERLE, *WHO SHOULD PAY FOR COLLECTING TAXES?: FINANCING THE IRS* 26 (1986) (estimating that every additional dollar spent by the IRS on auditing returns raises \$4 to \$7 of additional revenue).

30. P. 333 (internal quotation marks omitted).

sive the return will appear to a guardian of civic virtue and the more promising the return will appear to a maximizer of net revenue.

Not only is the conflict described in *The Pale King* not the conflict that actually took place; it is hard to imagine that the debate on tax administration philosophy would ever take the form described in the novel, for the simple reason that the operational differences between the book's competing philosophies are minimal.

The Pale King's description of the battle over the mission of the Service diverges from reality in one other significant respect. According to the fictional Wallace,

[V]ery few ordinary Americans know anything about . . . the deep changes the Service underwent in the mid-1980s, changes that today directly affect the way citizens' tax obligations are determined and enforced. . . . The real reason why US citizens were/are not aware of these conflicts, changes, and stakes is that the whole subject of tax policy and administration is dull. Massively, spectacularly dull. (p. 83)

If there is any truth to this, it is only in the sense that many Americans are abysmally ignorant about public affairs and civics in general. The IRS's 1985 and 1997–98 crises both received extensive media coverage. In the case of the Service's 1985 failings, the public attention was sufficient that Commissioner Egger felt compelled to include an apology with the tax forms mailed in early 1986.³¹ And the events of 1997–98 captured the public's attention to the extent that "kinder, gentler IRS" became a half-joking catchphrase.³²

This is anything but surprising. Although most people undoubtedly find the details of the determination of one's tax liability to be excruciatingly dull, it hardly follows that they would be uninterested in how the Service interacts with taxpayers. During both crises, the media coverage focused on the Service's mistreatment of taxpayers—for example, by losing their returns, delaying their refunds, and (allegedly) trampling upon their rights during audits and collections.³³ One can be bored by the intricacies of substantive tax law and still be fascinated by the behavior—especially the bad behavior—of the IRS. Even setting aside taxpayers' fears of mistreatment by incompetent, hostile, or abusive federal bureaucrats, tax is about the division of a taxpayer's income between herself and the government, and hardly anyone is bored by the question of how much of her income she gets to keep. In using the federal income tax as the locus for its examination of boredom, *The Pale King* fails to distinguish between those aspects of tax law and administration that most people really do find boring, and those aspects that most people find interesting or even compelling.

31. See Hershey, Jr., *supra* note 14.

32. A search for "kinder, gentler IRS" in the LexisNexis "News, All" file for the period from 1/1/97 to 12/31/98 produces 152 hits.

33. See *supra* notes 12–15.

B. Tax Civics

In the chapter entitled “Author’s Foreword,” the fictional Wallace describes *The Pale King* as being about (among other things) “elementary civics and tax theory” (p. 73). There are two sustained examinations of tax civics in the book. One is a conversation, apparently in a stuck elevator, dominated by DeWitt Glendenning, the Director of the Peoria REC (Chapter Nineteen). Glendenning is a staunch tax administration traditionalist and a firm believer in the civic importance of taxpaying. The fictional Wallace quotes Glendenning as having remarked (not in the stuck elevator), “If you know the position a person takes on taxes, you can determine [his] whole philosophy. The tax code, once you get to know it, embodies all the essence of [human] life: greed, politics, power, goodness, charity.”³⁴ This is a very slightly revised (and, of course, unattributed) version of actual remarks by Sheldon S. Cohen, who served as commissioner of the IRS from 1965–69.³⁵

While trapped in the elevator, Glendenning expresses his regret that Americans seem to have lost their understanding of taxpaying as the fulfillment of an obligation of citizenship:

We’ve changed the way we think of ourselves as citizens. We don’t think of ourselves as citizens in the old sense of being small parts of something larger and infinitely more important to which we have serious responsibilities. We do still think of ourselves as citizens in the sense of being beneficiaries We think of ourselves now as eaters of the pie instead of makers of the pie.³⁶

The Pale King’s overall presentation of Glendenning is strongly positive—“I didn’t know a person at the Post who didn’t like and admire DeWitt Glendenning,” the fictional Wallace remarks later in the book (p. 433)—so the reader is clearly meant to respect (at the very least) Glendenning’s understanding of tax civics. It is striking, however, that Wallace (the real Wallace) felt it necessary to hold Glendenning’s views at arm’s length—both by presenting them as views that could be expounded only to a literally captive audience, and by having the audience members complain that Glendenning is “talking like a civics class”³⁷ and that “[t]his whole conversation is dull.”³⁸

The book’s other sustained discussion of tax civics is the draft voiceover script for a video about the Internal Revenue Service, *Your IRS Today*, being prepared by the Peoria REC in the hope it will be shown on public television or to civics classes in schools:

34. P. 82 (alterations in original) (internal quotation marks omitted).

35. See JEFFREY H. BIRNBAUM & ALAN S. MURRAY, SHOWDOWN AT GUCCI GULCH: LAWMAKERS, LOBBYISTS, AND THE UNLIKELY TRIUMPH OF TAX REFORM 289 (1987).

36. P. 136 (internal quotation marks omitted).

37. P. 131 (internal quotation marks omitted).

38. P. 138 (internal quotation marks omitted).

In the body politic of the United States of America, many have likened your IRS to the nation's beating heart, receiving and distributing the resources which allow your federal government to operate effectively in the service and defense of all Americans. . . . The heart, too, of these United States as a team, each income earner chipping in to share resources and embody the principles that make our nation great. . . . Far from faceless bureaucrats, these [inaudible] men and women of today's IRS are citizens, taxpayers, parents, neighbors, and members of their community, all charged with a sacred task: to keep the lifeblood of government healthy and circulating. . . . Just like the nation's *E pluribus unum*, our Service's founding motto, *Alicui tamen faciendum est*, says it all—this difficult, complex task must be performed, and it is your IRS who roll up their sleeves and do it.³⁹

Immediately after quoting the voiceover script, the fictional Wallace remarks that it is “laughably bad” (p. 102). It is undeniably somewhat over the top. Nevertheless, I came away from reading *The Pale King* with the distinct impression that the real Wallace was at least sympathetic to—and probably in agreement with—the views expressed by Glendenning and by the script of *Your IRS Today*.

As Glendenning accurately observes (p. 139), there was a time when the understanding of taxpaying as an obligation of citizenship was widespread. There is considerable anecdotal evidence that the view of taxpaying as a fundamental duty of citizenship was rooted in American culture as recently as the mid-1960s.⁴⁰ In sad contrast (sad, at least, to this reviewer), the real Wallace seems to have believed—quite reasonably—that today's readers would not be open to a straightforward presentation of taxpaying as a duty of citizenship. Instead, he found it necessary to apologize to his readers for bringing up the topic—by suggesting that tax civics is a viable topic for conversation only in a stalled elevator, and by inventing an IRS-sponsored discussion of tax civics featuring “laughably bad” rhetorical flourishes.

Wallace's courage and originality in tackling tax civics as a novelistic theme are admirable, but Wallace does not completely succeed in dramatizing the issue. Instead of being worked out in the action of the novel, the tax civics theme features primarily as the subject of Glendenning's semimonologue and the voiceover narration of the IRS video. Attitudes toward taxes play out more importantly in the behavior of taxpayers than in the behavior of tax collectors, and an IRS examinations center—in which taxpayers are represented only by their tax returns—provides little opportunity for the exploration of taxpayer behavior. All in all, issues of tax civics have been more effectively dramatized in a number of tax-related episodes of situation comedies⁴¹ than in *The Pale King*—certainly not because the creators of the

39. Pp. 101–02 (alterations in original) (internal quotation marks omitted). Loosely translated, the IRS motto (fictional, of course) means “but somebody's got to do it.”

40. See, e.g., Lawrence Zelenak, *Justice Holmes, Ralph Kramden, and the Civic Virtues of a Tax Return Filing Requirement*, 61 TAX L. REV. 53, 61–70 (2007).

41. For descriptions of eighty-nine tax-related sitcom episodes from the 1940s to the present, see Zelenak, *supra* note 7.

sitcoms were more talented artists than Wallace, but simply because the sitcoms focus on taxpayers rather than on the IRS.⁴²

C. Boredom and Working for the IRS

In his time at the Peoria REC, the fictional Wallace “learned . . . something . . . [a]bout negotiating boredom as one would a terrain, its levels and forests and endless wastes” (p. 85). Boredom in the workplace is a major theme of *The Pale King*. There is no doubt that boring work is a major phenomenon of twenty-first century life in the United States. There is also no doubt that the topic is underexplored in fiction, film, and television, for the obvious reason that depictions of boredom are likely to be themselves boring. Some of the book’s insights about boredom are truly striking, and the topic is more effectively dramatized than I would have thought possible.

The novel tackles boredom from a number of perspectives. There is the low comedy of the newspaper report of the death from a heart attack of examiner Frederick Blumquist. It took his coworkers four days to realize he had died at his desk, because “[h]e was always absorbed in his work, and kept to himself.”⁴³ There is a detailed and affecting portrait of examiner Shane Drinion, for whom “almost anything you pay close, direct attention to becomes interesting,”⁴⁴ and who—in a nice touch of magical realism, of which there are several in the book—levitates slightly when he becomes “completely immersed” in his work (p. 485). And there is the long-winded but mesmerizing monologue of “Irrelevant” Chris Fogle, who remarks that for him—and, he estimates, for perhaps 20,000 of the Service’s 105,000 employees—working for the IRS “fulfills all the professional and psychological criteria for a real vocation” (p. 176). This sense of vocation, Fogle explains, is because of the boredom, not in spite of it. Fogle tells the story of his own conversion experience, when he accidentally sat in on the last day of a class at DePaul in Advanced Tax. The professor (a “Jesuit father in ‘mufti,’” or so thought Fogle)⁴⁵ lectured his students: “Enduring tedium over real time in a confined space is what real courage is. Such endurance is, as it happens, the distillate of what is, today, in this world neither I nor you have made, heroism. Heroism.”⁴⁶ Fogle is not just persuaded, but converted, and soon makes his way (through a blizzard of historic proportions) to the nearest IRS recruiting office (pp. 238–52).

42. The most effective dramatization in *The Pale King* of the decline in civic virtue does not involve taxes at all. Rather, it is the detailed description, both tragic and hilarious, of the traffic problems in the vicinity of the Peoria REC. The fictional Wallace writes that the “selfish, me-first behavior [of other drivers] began to fill me with such disgust and malice that I can still, to this day, remember some of the vehicles that chronically did it.” P. 273.

43. P. 28 (internal quotation marks omitted).

44. P. 456 (internal quotation marks omitted).

45. P. 226. DePaul University is, in fact, associated with the Vincentian order, but Fogle is under the mistaken impression that it is a Jesuit institution. Whether Wallace was also under that mistaken impression is unclear.

46. P. 229 (internal quotation marks omitted).

As wonderful as *The Pale King*'s examination of boredom surely is, the choice of the job of IRS examiner as the apotheosis of white-collar boredom is a dubious one. As IRS trainers explain the process to new examiners (Chapter Twenty-Seven), selected returns are forwarded from an IRS computer center to RECs. At the RECs, examiners determine whether particular returns should be audited based on whether an audit would be likely to "produce a maximal increase [in revenue] when the cost of the audit is subtracted."⁴⁷

Would this be a boring job? I admit it would not be my first choice of employment, but I can think of many more tedious jobs. It is, after all, a sort of armchair detective work, and most people think detective work is interesting. True, it is detective work in the tradition of Mycroft Holmes rather than Sherlock Holmes, and true, there is a reason why Dr. Watson chronicled the exploits of Sherlock rather than Mycroft. But even armchair detective work is more interesting than many jobs. The strange thing is that Wallace (the real Wallace) is clearly aware of this fact. He has a trainer explain to new examiners that their work requires "your own creativity and instinct for smelling a rat in the woodwork,"⁴⁸ which hardly sounds like a description of the most tedious job in the world. Nevertheless, *The Pale King* declares that the work of examiners is "one of the most tedious and dronelike white-collar jobs in America" (p. 76), "[b]oredom past boredom,"⁴⁹ "boredom beyond any boredom . . . ever felt" (p. 377), and "soul-murdering" (p. 381).

There is a glaring omission from *The Pale King*'s examination of the tedium of work as a tax return examiner: the book never describes the thought processes of an examiner as he goes through a return and considers whether to order an audit of the return. We are told that some examiners are bored and that others (such as Shane Drinion) are immersed in concentration, but we are not given a single instance of the thinking involved in examining a return. I suspect this is the first time in history that a reviewer has criticized a novel for not including a detailed description of a tax return examination, but given the ambitions of *The Pale King* this is a serious omission. Wallace might have omitted such a description out of fear of boring his readers, but that seems doubtful given Wallace's admirable willingness throughout the book to risk boring his readers in various ways.⁵⁰ I suspect, rather, that he realized that a detailed description of the return examination process would have revealed that the job is not particularly boring—that it is, in fact, rather interesting in its own way—and that that would have undermined the novel's presentation of examinations as the epitome of boredom.

If Wallace wanted to write a novel about workplace tedium, and if he realized the job of IRS examiner was not particularly high on the boredom

47. P. 339 (internal quotation marks omitted).

48. P. 342 (internal quotation marks omitted).

49. P. 368 (internal quotation marks omitted).

50. Examples include the stuck-elevator musings of DeWitt Glendenning on civic virtue, chapter 19, and the rambling monologue of "Irrelevant" Chris Fogle, chapter 22.

scale, why did he nevertheless set the book in the Peoria REC? One can only speculate, but my guess is that (1) Wallace was attracted to the IRS setting as an opportunity to explore, in the same book, both boredom and civic responsibility, and (2) he thought that the public's belief in the inherent and utter boringness of tax is so profound that readers would never question the notion of tax return examination as the *ne plus ultra* of workplace tedium. It is a testimony to the depth of the general belief in the dullness of tax that Wallace would choose IRS examiner as the locus for his exploration of workplace boredom, despite his own apparent understanding that the work demands considerable creativity and intuition.

II. TRUTH AND FICTION IN *THE PALE KING*

I suspect most readers of *The Pale King* will wonder, at many points in the book, whether some item of information offered as factual is real, the product of Wallace's imagination, or some mixture of truth and fiction. The novel includes items falling into all three categories. A few such items have been discussed above (including the attribution of the words of the real Sheldon S. Cohen to the fictional DeWitt Glendenning, the transferring of the 1985 Philadelphia Service Center fiasco to the fictional Rome REC in 1982, and the invention out of whole cloth of the Service's Latin motto), and several more are discussed below. The abundance and sophistication of all three types of factual assertions—accurate, fabricated, and mixed—indicate that Wallace must have undertaken a prodigious amount of self-education on substantive tax law, tax administration, and tax policy.

According to the fictional Wallace, when one becomes an employee of the Internal Revenue Service one receives a new Social Security number ("SSN"), beginning with the numeral 9 (p. 66 n.1). Wallace states that anyone with an SSN starting with 9 is necessarily a current or former IRS employee (p. 66 n.1). "It's like you're born again, ID-wise, when you enter the Service," he explains (p. 66 n.1). "And if you're issued one, it stays with you for the rest of your life, even if you happen to have left the IRS long ago" (p. 66 n.1). The idea of joining the IRS as the secular equivalent of "Thou art a priest for ever after the order of Melchizedek"⁵¹ is a lovely conceit, and it reinforces Chris Fogle's view of working for the Service as a "real vocation" (p. 176). However, having worked for the Service, I can regretfully report that I have the same SSN now that I had before my tour of duty.

The fictional Wallace gives the address of the national office of the IRS as 666 Independence Avenue (p. 72 n.7). Lest the reader doubt, he insists on the fact: "And yes: The Service's national HQ's street number really is '666.' So far as I know, it's nothing more than an unfortunate accident Service personnel tend to refer to the national office as 'Triple Six'" (p. 72 n.7). Again, reality is not quite so wonderful, although it is clear that the fictional address was inspired by the real address of 1111 Constitution Ave-

51. *Psalms* 110:4 (King James).

nue. And yes, I can confirm from personal experience that Service personnel tend to refer to the national office as “eleven-eleven.”

The story of the leader of the forces intent on remaking the IRS on a profit-maximizing model is a blend of fact and invention. According to his aides, Merrill Errol Lehl enjoyed a meteoric rise through the bureaucracy from a “low-level audit group in a backwater district” on the strength of one brilliant idea—requiring a taxpayer claiming a dependent to include the dependent’s SSN on the return.⁵² The aides claim that when the reform was implemented in 1979, “[s]ix-point-nine million dependents disappear[ed] . . . [f]rom the nation’s 1040s.”⁵³ Lehl is fictional, but his background is based on fact. Requiring SSNs for dependents was actually the inspiration of John Szilagyi, an employee in the research branch of the IRS.⁵⁴ The idea was implemented in 1987 (following legislative authorization for the requirement in 1986), and approximately seven million children did indeed vanish from the nation’s tax returns following implementation.⁵⁵ Szilagyi did not use his idea to climb the bureaucratic ladder and restructure the IRS, but he did eventually receive a bonus of \$25,000 (by which time his idea had increased tax revenues by about \$14 billion).⁵⁶

In Wallace’s “Notes and Asides,” included by Pietsch as a sort of appendix to the novel, Wallace describes his intention to include in the book Lehl’s plan to stage a contest between a computer and the best human examiner (perhaps the estimable Shane Drinion), with the ultimate goal of replacing human examiners with computers.⁵⁷ Nothing of this John Henry-style competition appears in the novel as published, but it might have been a major plot line if Wallace had completed the book. I cannot say whether the possibility of replacing human examiners with computers has ever been considered within the Service, but I can report that the IRS still relies on human examiners. According to the current version of the IRS Manual (the “Manual”), computers select returns to be screened by examiners for possible audit, and those returns are then “manually classified by experienced examiners to select returns that contain significant issues.”⁵⁸ The Manual instructs examiners to “use their skills, technical expertise, local knowledge and experience to identify hidden, as well as obvious, issues.”⁵⁹ This is in the same spirit as the previously mentioned trainer of examiners in *The Pale King*, who tells examiners to use “your own creativity and instinct for smelling a rat in the woodwork.”⁶⁰ The work of examiners involves too much

52. Pp. 528–30 (internal quotation marks omitted).

53. P. 531 (internal quotation marks omitted).

54. Stephen J. Dubner & Steven D. Levitt, *Filling in the Tax Gap*, N.Y. TIMES, Apr. 2, 2006, § 6 (Magazine), at 26.

55. *Id.*

56. *Id.*

57. Notes and Asides, pp. 543–46.

58. Standards for Classification, IRM 4.1.5.1.5.1 (Oct. 24, 2006).

59. *Id.*

60. P. 342 (internal quotation marks omitted).

creativity and instinct to be easily assigned to computers (at least until the creators of *Jeopardy!*-playing Watson⁶¹ turn their attention to tax administration), and human examiners remain very much with us today.

Chris Fogle describes—at length, as is his wont—the disastrous 1977 Illinois experiment with a progressive sales tax (pp. 194–97). This is pure—and wonderful—invention on Wallace’s part. Fogle begins by explaining (quite clearly and accurately) the technical operation of and the policy rationale for an income tax with progressive marginal rates.⁶² He then tells the story of how someone in the Illinois state treasurer’s office had the idea of also applying progressive marginal rates to the sales tax, and how the state legislature enacted the proposal (pp. 194–95). The progressive rates of the Illinois sales tax were applied on a purchase-by-purchase basis. For any one purchase, the first \$5 was taxed at 3.75%, the next \$15 at 6%, the next \$22 at 6.8%, and the remainder at 8.5% (p. 195).

Of course, this plan would have made no policy sense even if it could have been administered efficiently. The ability-to-pay rationale for progressive marginal rates applies only in the context of a tax imposed on individuals based on their income (or consumption) over an entire year. Because there is no meaningful correlation between an individual’s total income (or consumption) and the amount of any given purchase, the idea of applying graduated sales tax rates on a purchase-by-purchase basis makes no sense.

The plan’s miserable failure, however, was attributable more to its practical shortcomings than to its philosophical incoherence. Consumers and merchants altered their behavior to avoid making purchases of more than \$5. Supermarket checkout lines became nearly endless, as no one would buy more than \$5 worth of groceries on a single trip to the cash register (p. 195). Gas stations were plagued by similar problems. Eventually, even car dealers joined in the fun by selling cars piece-by-piece in “thousands of different \$4.99 transactions” (p. 196). After less than four months, the legislature realized its mistake and repealed the progressive sales tax (p. 196). As noted earlier, this episode is entirely the product of Wallace’s imagination, and perhaps obviously so (although I confess to having Googled it to make sure). As an invention, however, it is utterly brilliant. In the span of a few pages, Wallace has written a laugh-out-loud-funny fable that (1) explains the concept of progressive marginal rates, (2) illustrates why the concept makes sense only in the context of a tax imposed on individuals rather than on transactions, and (3) offers an unforgettable example of how designers of a tax system must take into account likely behavioral responses to the tax. I

61. John Markoff, *Computer Wins on “Jeopardy!”: Trivial, It’s Not*, N.Y. TIMES, Feb. 17, 2011, at A1 (describing the “Jeopardy!” victory of IBM’s Watson computer over two of the trivia quiz show’s all-time human champions).

62. P. 193 (“A progressive tax is where the ratio [tax/base] increases as [base] increases and decreases as [base] decreases . . .”); p. 194 (“[I]ncome taxes are almost always progressive, given our country’s democratic ideals.”).

am sure I will never again teach the basic course in federal income taxation without discussing the Illinois progressive sales tax experiment of 1977.

III. THE MYSTERY OF THE TITLE

Who, or what, is the “Pale King” of the novel’s title?⁶³ The answer (or at least my best guess as to the answer) offered below sheds no particular light on Wallace’s views on the income tax, but the puzzle of the title is sufficiently interesting to justify this slight detour.

One character refers to DeWitt Glendenning’s unnamed (and otherwise unmentioned) predecessor as “the Pale King” (p. 128), but this reference is absurdly inadequate as an explanation for the title. With a little imagination, one can construct a theory for the title, or at least find some resonances. The Form 1040 is printed on white paper. Could it be the Pale King? If Wallace was consciously writing in the tradition of *Moby-Dick*, perhaps an allusion to the 1040 as the Pale King was intended to suggest a connection with the great white whale.

However, a close reading of Chapters Thirty-Five and Forty-Nine strongly suggests the title’s primary significance lies elsewhere. Chapter Thirty-Five is narrated by an unnamed IRS auditor (not an examiner). The narrator describes how his group manager regularly brought his infant son to work, and remarks that he was impressed by the infant’s “pale face” and the way the infant somehow “radiat[ed] authority” (p. 387). On one occasion the narrator found himself alone with the infant in the group manager’s office. Falling under the spell of the infant’s fierce gaze, the narrator realized that he “was, thenceforth, this tiny white frightening thing’s to command, its instrument or tool” (p. 393). In Chapter Forty-Nine, two of Lehl’s aides describe Lehl to Chris Fogle. Several clues—including, most vividly, references to a Doberman hand puppet in both chapters—make it clear that Lehl and the narrator of Chapter Thirty-Five are the same person. The aides tell Fogle that Lehl generally has a “seven-, eight-year-old kid” with him in his office: “The kid’s the kid of one of Dr. Lehl’s senior staff back at Danville . . . Dr. Lehl just likes having the kid around.”⁶⁴

This mysterious child is surely the Pale King of the title. Even in the novel’s unfinished condition, the child is much more plausible as a title character than Glendenning’s predecessor. Still, the child’s role in the novel as published seems far too limited to justify his titular status. The title makes more sense, however, when considered together with the references in Wallace’s “Notes and Asides” to a planned showdown between human examiners and computers. Taken together, the title and the “Notes and Asides” strongly indicate that Wallace intended the action of the novel to

63. The title is clearly of Wallace’s choosing, rather than that of editor Pietsch. In the “Author’s Foreword” the fictional Wallace repeatedly refers to the book as “*The Pale King*,” Chapter 9.

64. P. 534 (internal quotation marks omitted).

center on Lehl's plan—developed under the influence of the Pale King—to replace human examiners with computers.

CONCLUSION

The Pale King does not get everything about tax exactly right. It correctly identifies the existence of competing philosophies of tax administration, but it does not accurately describe the content of those philosophies. It holds out IRS examiner as the most boring job imaginable, when in fact the job provides considerable scope for creativity and imagination. One also regrets, of course, its unfinished status. The hints—in the “Notes and Asides” and in the title itself—of how Wallace might have finished the novel only increase one's disappointment that he did not. Even with its few mistakes about tax and in its unfinished condition, however, *The Pale King* is an utterly compelling novel focused on two themes—taxation and boredom—that only the most intrepid of novelists would dare to tackle.

Along with many other tax professionals, I have long been of the same view as the real Sheldon Cohen and the fictional DeWitt Glendenning—that “[t]he tax code . . . embodies all the essence of [human] life: greed, politics, power, goodness, charity.”⁶⁵ It does not surprise me, then, that tax administration *could* serve as the setting for a novel exploring some of the deepest questions of modern life. I did not expect, however, that any novelist actually *would* write such a book. Even less did I anticipate that such a book would be written by a novelist with the powers of David Foster Wallace, or that the author would treat tax as seriously—as a subject worthy of detailed examination in its own right—as Melville treated whaling. The Great American Novel may never be written, but the wait for the Great American Tax Novel is over.

65. P. 82 (last alteration in original) (internal quotation marks omitted).